

EXHIBIT 8

The Honorable John H. Chun

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC., et al.,

Defendants.

No. 2:23-cv-0932-JHC

**FEDERAL TRADE COMMISSION’S
SUPPLEMENTAL RESPONSES
AND OBJECTIONS TO
AMAZON.COM, INC.’S FIRST SET
OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Plaintiff Federal Trade Commission (“FTC”) hereby objects and responds to Defendant Amazon.com, Inc.’s First Set of Interrogatories (“Interrogatories”). These Supplemental Responses supersede the FTC’s previous responses and objections, dated October 2, 2023.

GENERAL RESPONSES AND OBJECTIONS

1. Discovery has not concluded in this litigation. Accordingly, the FTC’s responses and objections are based upon the information available to the FTC at this stage in the litigation and presently known by the FTC. The FTC reserves the right to supplement, revise, modify, or

otherwise change or amend these responses in light of any information that it subsequently may obtain or discover, consistent with Federal Rule of Civil Procedure 26(e). The FTC does not waive its right to rely upon information that is not being disclosed at this time, including but not limited to information that the FTC has requested or will request through its own discovery propounded on Amazon.com, Inc. (“Amazon”), the individual defendants (Neil Lindsay, Russell Grandinetti, and Jamil Ghani), and third parties. Objections made by the FTC are made without prejudice to the FTC’s right to assert additional objections in the event that additional grounds for objections are discovered by the FTC subsequent to this response.

OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: Identify all FTC Documents and Communications, including but not limited to publications, guidance, policy statements, workshops, speeches, conferences, and rulemaking efforts Relating to Dark Patterns or Negative Options, and all drafts thereof.

RESPONSE: In the initial Interrogatory Responses, the FTC objected to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of FTC guidance, communications, and other documents unrelated to the Action or Investigation and without temporal limitation. The FTC also objected that the Interrogatory is beyond the permissible scope of discovery because it seeks information that is irrelevant to any party’s claim or defense or, even if relevant, is disproportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). In particular, the Interrogatory asks the FTC to log or produce every single document and communication it possesses that relates in any way to Dark Patterns or Negative Options. Almost all of those documents are irrelevant to whether Amazon violated ROSCA or the FTC Act, and therefore are irrelevant to any claim or defense in this litigation.

In Amazon's December 12, 2023 letter, it agreed to modify Interrogatory No. 1 as follows: "Identify all publications, guidance, policy statements, speeches, conference[s], and rulemaking efforts relating to Dark Patterns or Negative Options." Without waiving its prior objections, and based on a reasonable and diligent search, the FTC hereby responds to the modified Interrogatory No. 1:

Informal Hearing on Proposed Negative Option Rule, 88 Federal Register 85525 (hearing date Jan. 16, 2024), <https://www.federalregister.gov/documents/2023/12/08/2023-26946/negative-option-rule>

BCP Director Samuel Levine, *A Progress Report on Key Priorities, and a Warning on AI Self-Regulation*, The National Advertising Division Annual Conference (Sept. 19, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/remarks-of-samuel-levine-at-nad-2023.pdf

Remarks of Chair Lina M. Khan, Economic Club of New York (July 24, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/remarks-khan-economic-club-new-york.pdf

Proposed Negative Option Rule, 88 Federal Register 24716 (published Apr. 24, 2023), <https://www.federalregister.gov/documents/2023/04/24/2023-07035/negative-option-rule>

BCP Director Samuel Levine, *Beyond the FTC: The Future of Privacy Enforcement*, Harvard Law School (Apr. 1, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/Remarks-to-JOLT-4-1-2023.pdf

BCP Director Samuel Levine, *To Empower, Not to Weaken: Rethinking Consumer Protection in the Digital Age*, BEUC: The European Consumer Organisation (Sept. 27, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/S.LevineBEUCspeech9272022FINAL.pdf

"Bringing Dark Patterns to Light" FTC Report (Sept. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf

Oral Remarks of Commissioner Christine S. Wilson, Open Commission Meeting on September 15, 2022, https://www.ftc.gov/system/files/ftc_gov/pdf/wilson-oral-remarks-open-commission-meeting-9-15-2022.pdf

Statement of Commissioner Rebecca Kelly Slaughter, *Regarding Bureau of Consumer Protection Staff Report: "Bringing Dark Patterns to Light"*, https://www.ftc.gov/system/files/ftc_gov/pdf/rks-statement-dark-patterns.pdf

BCP Director Samuel Levine, *Keynote Remarks*, Cleveland-Marshall College of Law Cybersecurity and Privacy Protection Conference (May 19, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/Remarks-Samuel-Levine-Cleveland-Marshall-College-of-Law.pdf

“Enforcement Policy Statement Regarding Negative Option Marketing” (dated Nov. 24, 2021), https://www.ftc.gov/system/files/documents/public_statements/1598063/negative_option_policy_statement-10-22-2021-tobureau.pdf

“Bringing Dark Patterns to Light: An FTC Workshop” (April 29, 2021), <https://www.ftc.gov/news-events/events/2021/04/bringing-dark-patterns-light-ftc-workshop>

Opening Remarks of Acting Chairwoman Rebecca Kelly Slaughter at “Bringing Dark Patterns to Light” Workshop (April 29, 2021), https://www.ftc.gov/system/files/documents/public_statements/1589931/opening_remarks_of_acting_chairwoman_slaughter_at_ftc_dark_patterns_workshop.pdf

Dark Patterns Workshop Transcript (April 29, 2021), https://www.ftc.gov/system/files/documents/public_events/1586943/ftc_darkpatterns_workshop_transcript.pdf

Statement of Commissioner Rohit Chopra, *Regarding Dark Patterns in the Matter of Age of Learning, Inc. Commission File Number 1723186* (Sept. 2, 2020), https://www.ftc.gov/system/files/documents/public_statements/1579927/172_3086_abcmouse_rchopra_statement.pdf

“Negative Options” FTC Report (dated January 2009), <https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf>

“Negative Options: A Workshop Analyzing Negative Option Marketing” (January 25, 2007), <https://www.ftc.gov/news-events/events/2007/01/negative-options-workshop-analyzing-negative-option-marketing>

INTERROGATORY NO. 2: Identify all companies that, to Your knowledge, have used Dark Patterns in violation of ROSCA or Section 5.

RESPONSE: The FTC objects to this Interrogatory as overbroad, unduly burdensome, and seeking irrelevant information, in that it asks the FTC to “[i]dentify all companies that . . .

VERIFICATION

I am authorized to verify Plaintiff's Supplemental Responses and Objections to Amazon.com, Inc.'s First Set of Interrogatories on behalf of the Federal Trade Commission, and I declare under penalty of perjury that the foregoing responses are true and correct to the best of my knowledge.

Executed on January 23, 2024

/s/ Evan Mendelson

Evan Mendelson